



Gas Industry Standards Board

1100 Louisiana, Suite 4925, Houston, Texas 77002

Phone: (713) 356-0060, Fax: (713) 356-0067, E-mail: gisb@aol.com

Home Page: www.gisb.org

via email

TO: GISB Contract Subcommittee Participants & Posting for Interested Industry Participants
FROM: Rae McQuade, Executive Director
RE: Summary of changes suggested via work papers for the base contract
DATE: April 20, 2000

Dear GISB Contracts Subcommittee Participants,

Attached is the summary of changes provided through work papers to the base contract. They are identified by section and by submitter. The submitters are thanked for taking the time to provide these suggestions. Their full work papers are posted on the home page and attached as work papers. The submitters are:

AEP	The language provided is offered in the summary table.
Dynegy	The reasons for suggested changes are provided in the summary table, the actual language changes can be found in the Dynegy work paper - redlined contract. The changes also include changes for a long term contract and are marked with "(***)".
ExxonMobil	The language provided is offered in the summary table.
Koch	The language provided is offered in the summary table.
MCV	The language provided is offered in the summary table.
Reliant	The identification of areas to change is provided in the work paper and in the summary table.
Southern	The language provided is offered in the summary table.

Also attached is the base contract as a work paper and authorized for use as a work paper only. Most of the participants are members and have easy access to the contract through the password protected portion of the GISB home page and can use the contract with their trading partners -- but some of the participants are not members and may not have access to the contract. The participants and membership status are also attached.

Best Regards,

Rae McQuade



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SECTION	SUBMITTER	CHANGE
1.2	Dynegy	Section 1.2 was revised to make it optional to send Transaction Confirmations for transactions that have a period of delivery that is less than one month in length. We also included language to better define when each Party can send confirmations.
1.2	ExxonMobil	Section 1.2 Written Transaction Procedure, 3rd sentence: "Confirmation" should be plural.
1.2	Koch	The insertion of the following language to Section 1.2 Oral Transaction Procedure: "The Parties agree that each party may electronically record all telephone conversations between their respective employees, without any special or further notice, and each party hereby waives any claim against the validity of any telephonic Transaction (under laws that may require a writing or otherwise) and agrees that such recording(s) are admissible as evidence in any court or other proceeding for any purpose or concluded Transaction or other matter under this Contract.
1.2	Reliant	Add Arbitration Option. Add this option as a choice on the first cover page of the GISB and provide an appropriate provision in the body of the Base Contract.
1.2	Reliant	Add "Paperless" Option (no follow-up confirms sent for certain defined transactions). Add this option as a choice on the first cover page of the GISB and provide an appropriate provision in the body of the Base Contract.
1.2	Reliant	Transaction Procedures. Add consent to the recording of telephone transactions and waiver of related evidentiary rules. Address Electronic Trading and related evidentiary waivers. Add "Paperless" (no follow-up confirms) Transactions (see above)
1.2	Reliant	Add language related to Options.
1.2	Southern	Appended to the end of the Base Contract's Oral Transaction Procedure §1.2: Failure by either party to send or return an executed Confirmation shall not invalidate any transaction agreed to by the parties. In the event of a disagreement regarding the terms reflected on a Transaction Confirmation, the parties agree to examine and, absent



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		manifest error or apparent mutual mistake therein, rely on the terms of the conversation in which the transaction was originally agreed upon as the definitive statement of their intent and applicable contractual terms. Each party consents to the recording of its representatives' telephone conversations regarding this Base Contract or any transaction without any further notice. All such recordings may be introduced into evidence and used to prove oral agreements between the parties. The parties agree not to contest, challenge or assert any defense to the validity or enforceability of telephonic transactions entered into in accordance with the requirements of this Base Contract.
1.3	AEP	Section 1.3 is amended by replacing the last sentence thereof with the following: "In the event of a conflict among the terms of (i) a Transaction Confirmation that is signed or passage of the Confirm Deadline without objection from the receiving party, (ii) a recorded conversation, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence."
1.3	Dynegy	Section 1.3 was revised to make it such that if the Parties find something like a typographical error on a Confirmation, after the Confirm Deadline has passed, the Confirmation can be corrected.
1.4	Dynegy	Section 1.4 was added to make it optional to record telephone conversations. Most companies are already doing this.
1.4	MCV	Add: Without further notice or consent, each party consents to the electronic recording of telephone conversations between the parties. Further, each party agrees that either party may use these recordings in its business affairs as it deems appropriate.
2.1	Dynegy	Section 2.1 - added a definition for the term "Affiliate". With all of the mergers, divestitures and acquisitions going on, this is an important term to define.
2.5	Dynegy	Section 2.5 - added a definition for "Business Hours". Because of the global economy, it is important that everyone understand what is meant by normal business hours.
2.6	AEP	The definition of "Contract" in Section 2.6 is modified by inserting



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		the words "as modified by the Special Provisions" between the words "Base Contract" and "and (ii)".
2.6	Dynergy	Section 2.6 - added a definition for "Cash-Out". This is a term that is frequently used in the industry and is a charge that is frequently used when calculating transportation costs.
2.9	Reliant	Add Events of Default Section.
2.17	Dynergy	Section 2.17 - Revised the definition of an EFP transaction to note that its remedy calculations are different from the typical Firm transaction. (***)
2.22	Dynergy	Section 2.22 - added a definition for "Locked Quantity". When a transaction has a quantity of Gas that is considered EFP or was triggered into a fixed hedged NYMEX Forward Price, the quantity becomes "locked". (***)
2.25	Dynergy	Section 2.25 - added a definition for "NYMEX Forward Price". If triggered pricing transactions are going to be allowed under this contract, then we need to define this term. (***)
2.27	Reliant	Add definitions for Products and/or Service Levels that are routinely traded, i.e. base load, swing, etc. (This can be added to the Agreement as a Schedule which can be easily amended)
3.2	Dynergy	Section 3.2 (Cover Standard) - Assuming that EFP and NYMEX Forward Priced deals are going to be allowed under this contract, we added language to note that EFP and NYMEX Forward Priced transactions are not included in this remedy for non performance. We also added language to note that Cash-Out charges are considered to be incremental transportation costs. Last, but not least, we clarified the language for how to calculate damages when gas can't be sold by Seller or purchased by Buyer. The current language assumes that all of the gas can't be sold or purchased and there may be instances where a portion can be sold or purchased. The revised language helps to clarify that issue. (***)
3.2	Dynergy	Section 3.2 (Spot Price Standard) - Again, language was added to note that EFP and NYMEX Forward Priced transactions are not included in this remedy for non performance and to note that Cash-Out charges are considered to be incremental transportation



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		costs. Last, but not least, the original language did not include incremental transportation costs as part of the formula for calculating damages. The revised language helps to clarify that issue. (***)
3.2	Dynegy	Section 3.2 (EFP/NYMEX Spot Price Standard) – Assuming that EFP and NYMEX Forward Priced transactions are going to be allowed under this contract, a whole new section was added to note the calculation is tied to Inside FERC. (***)
3.2	ExxonMobil	Delete the first line of Section 3.2 (Cover Standard) and replace it with: "The exclusive and".
3.2	ExxonMobil	Add the following at the end of Section 3.2 (Cover Standard): "Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3.
3.3	Dynegy	Section 3.3 (Events of Default) – This is the first part of the Early Termination language. This section lists the various Events of Default for all Firm Transactions that can result in declaration of an Early Termination Date. (***)
3.4	Dynegy	Section 3.4 (Remedies Upon an Event of Default) – This language includes instructions on how and when a party can declare an Early Termination Date as well as how to calculate damages when an Early Termination Date has been declared. (***)
4.1	Dynegy	Section 4.1 – Language was added to note that neither Party shall be obligated to install compression in order to deliver Gas at a pressure sufficient to effect such delivery.
4.2	Dynegy	Section 4.2 – Language was added to give more specific deadlines for nominations. The current language is too generic. What constitutes "sufficient time"?
4.3	ExxonMobil	Delete last 2 sentences of Section 4.3 and replace with the following: "If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges, or reimburse Seller for such Imbalance Charges paid by Seller to the Transporter. If the Imbalance Charges were incurred as a result



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		of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges, or reimburse Buyer for such Imbalance Charges paid by Buyer to the Transporter. "
6.1	Dynegy	Section 6.1 - Language was added to note that the Buyer should be responsible for any Taxes that are imposed by the state (or any other governmental subdivision) in which the Gas is consumed.
6.2	Dynegy	Section 6.2 - This section was added to note that each Party indemnifies the other Party as far as Taxes and other charges are concerned.
6.3	Dynegy	Section 6.3 - This section was added to address the issue of new Taxes.
7	Reliant	Add Netting Provision to Section 7.
7.1	Dynegy	Section 7.1 - We added a sentence to note that pricing should be carried out to 4 decimal places. While most companies already do this, having the language in the contract will ensure consistency throughout the industry.
7.2	Dynegy	Section 7.2 - We added a sentence to note the order in which a payment is applied if late charges are due.
7.2	ExxonMobil	Add the following to Section 7.2: "For the purposes of this Contract, Automated Clearing House (ACH) is defined as ACH Credit. No ACH Debits are authorized for any transactions hereunder."
7.2	Southern	Appended to the end of the Base Contract's §7.2: Buyer may retain only the disputed portion pending resolution of the dispute without breach of the Contract. If retention of the disputed portion increases the total amount unpaid by the party withholding the sum claimed owed by the other party beyond any credit limits approved by the other party, then the other party may require additional collateral in a form acceptable to that other party in the amount of the credit overage. Upon resolution of such billing dispute, any underpayments or overpayments shall be paid or refunded with accrued interest at the above-designated rate for the period in which held by the other party.



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7.4	AEP	Section 7 is amended by adding in Section 7.4 after the word "examine" in the first sentence the words "and audit and to obtain copies of the relevant portion of." After the word "accurate" in the third sentence add the words "and all associated claims for under- or over-payments shall be deemed released".
7.4	MCV	Modify 7.4 as shown: 7.4. A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This examination right shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate unless objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7. shall be paid in full by the party owing payment within 30 days of notice and substantiation of such inaccuracy.
7.5	AEP	"Section 7.5 Notwithstanding the other provisions of this Section 7, if Gas is purchased or sold pursuant to the Base Contract or any Transaction Confirmation, the Party owing the greater amount including any related liquidated damages, interest, and payments or credits for its purchases during such calendar month (the "Debtor") shall apply the amount owed (the "Credit Balance") by the other Party (the "Creditor") toward payment of the amount owed by the Debtor to the Creditor for such calendar month. The remainder of the amount owed by the Debtor to the Creditor (after deduction of the Credit Balance) shall be paid to the Creditor in immediately available funds.
7.5	Dynegy	Section 7.5 - This section was added to give the Parties the option to net payments during a given Month.
7.6	Dynegy	Section 7.6 - This section was added to address the issue of suspension of performance due to non-payment. While this issue is currently addressed in Section 10.1, we felt it belonged here, as well.
8.2	AEP	Add to the end of Section 8.2 the following: "ALL OTHER



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SECTION	SUBMITTER	CHANGE
		WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED."
8.5	ExxonMobil	Insert the following paragraph as the new Section 8.5: "EXCEPT FOR THE WARRANTIES CONTAINED IN SECTIONS 5. AND 8., SELLER MAKES NO OTHER WARRANTIES HEREUNDER AND EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE GAS DELIVERED HEREUNDER."
9.3	ExxonMobil	Section 9.3, 3rd sentence: Replace comma after "successful transmission" with a semicolon.
10.1	AEP	New Sections 10.1(vi), 10.3 and 10.4 are added to the Base Contract as follows: At the end of Subsection 10.1(v) but before the word "then", insert: "or (vi) fail to give adequate security for or assurance of its ability to perform its further obligations within forty-eight (48) hours but at least one (1) Business Day of a reasonable written request by the Non-Defaulting party;"
10.1	Dynegy	Section 10.1 - We defined the "Debtor Party" and the "Demanding Party".
10.2	Dynegy	Section 10.2 - This section was added to establish rights and procedures for a Party to cancel a letter of credit or any other form of security it posted.
10.2	ExxonMobil	Add the following at the end of Section 10.2: "Each party may setoff any amount owed it by the other party against any amount owed to the other party, whether under this Contract or any other agreement or arrangement between or among the parties to this Contract. If any amount owed is unliquidated or unascertainable, a party may setoff an amount estimated by it in good faith to be the amount owed."
10.3	AEP	"Section 10.3 In the event that the Non-Defaulting party terminates the contract under Section 10.1, hereto, the Non-Defaulting party shall have the right to designate an early termination date ("Early Termination Date") as any date on or after the event of default under Section 10.1. Upon the Early



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		<p>Termination Date, the Non-Defaulting party shall have the right to liquidate any and all Transaction(s) under this Contract (including any portion of a Transaction(s) not yet fully delivered) then outstanding by:</p> <p>(i) Closing out each Transaction(s) being liquidated at its Market Value, as defined below, so that each such amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Transaction(s) shall be due to the Buyer under the Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and</p> <p>(ii) Discounting each amount then due under clause (i) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Transactions);and</p> <p>(iii) Setting off or aggregating, as appropriate, any or all settlement payments (discounted as appropriate) and (at the election of the Non-Defaulting party) any or all other amounts owing between the parties under this Contract so that all such amounts are aggregated and/or netted to a single liquidated amount payable by one party to the other. The Non-Defaulting party shall give notice that a liquidation pursuant to this Section 10.3 has occurred to the Defaulting party no later than the Business Day following such liquidation, provided that failure to give such notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting party against the Non-Defaulting party. The net amount due to any such liquidation shall be paid by the close of business on the fifth (5th) Business Day following notice of the Early Termination Date.</p> <p>For purposes of this Section 10.3, "Contract Value" means the amount of Gas remaining to be delivered or purchased on a firm basis under a Transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased on a firm basis under a Transaction multiplied by the market price determined by the Non-Defaulting party in a commercially reasonable manner. Any extension(s) of the term of a Transaction to which the Parties are not bound as of the Early Termination Date (including but not limited to "Evergreen" provisions and options to extend) shall not be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting party in a commercially reasonable manner. The parties agree that a Transaction under this Section 10.3 shall constitute a "forward contract" within the meaning of the United States Bankruptcy Code.</p>



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10.3	Dynegy	Section 10.3 - This section was added to note that cancellation of security does not preclude having to post security in the future.
10.3	Koch	<p>The insertion of the following language to Section 10. Financial Responsibility:</p> <p>10.3 In the event that the non-defaulting party terminates the Contract under Section 10.1, the non-defaulting party shall have the right within twenty (20) days of any event of default set out in Section 10.1 to designate in writing an early termination date ("Early Termination Date") as any date on or after the event of default under Section 10.1 to designate under Section 10.1. Upon the Early Termination Date, the non-defaulting party shall have the right to liquidate any and all transaction selected by it under the Contract (including any portion of a transaction not yet fully delivered) then outstanding by:</p> <p>(i) Closing out each transaction at its Market Value, as defined below, so that each transaction is cancelled and a settlement payment in an amount equal to the difference between such Market Value and the Contract Value, as defined below, if such Market Value exceeds the Contract Value and to Seller if the opposite is the case; and</p> <p>(ii) Discounting each amount then due under clause (i) above to present value in a commercially reasonable manner as at the time of liquidation (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant transaction); and</p> <p>(iii) Setting off or aggregating, as appropriate, any or all settlement payments (discounted as appropriate) and (at the election of the non-defaulting party) any or all other amounts owing between the parties under the Contract so that all such amounts are aggregated and/or netted to a single liquidated amount payable to the other. The net amount due any such liquidation shall be paid by the close of business on the Business Day following the receipt of written notice of the amount due, which notice shall be given on or as soon as reasonably practicable following the occurrence of an Early Termination Date.</p> <p>For purposes of "Contract Value" means the amount of the Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price per unit, and "Market Value" means the amount of Gas</p> <p>remaining to be delivered or purchased under a transaction multiplied by the market price per unit to be determined by the non-defaulting party in a</p> <p>commercially reasonable manner using the Cover Standard. The</p>



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		<p>rate of interest used in calculating net present value shall be determined by the non-defaulting party in a commercially reasonable manner. The parties agree that a transaction under the Section 10.3 shall constitute a "forward contract" within the meaning of the United State Bankruptcy Code.</p> <p>The non-defaulting party's rights under this Section 10.3 and to those amounts due under Section 3 accrued prior to the Early Termination Date are the sole and exclusive remedy of the non-defaulting party. The non-defaulting shall give notice that a liquidation pursuant to the Section 10.3 has occurred to the defaulting party no later than the Business Day following such liquidation, provided that failure to give such notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the defaulting party against the non-defaulting party.</p>
10.4	AEP	<p>Section 10.4 The Non-Defaulting party's remedies under Section 10.3 and the non-breaching party's rights to those payments accrued prior to the Early Termination Date pursuant to Sections 3.2 are the sole and exclusive remedy. Unless the Party benefiting from a security arrangement notifies the other Party in writing, all amounts netted and/or liquidated shall not take into account or include any security arrangements, including but not limited to guarantees, letters of credit, and escrow accounts, which may be in effect to secure a Party's performance."</p>
10.4	Dyneyg	<p>Section 10.4 - This section was added to give a Party the right to suspend performance if the other Party fails to provide adequate security on a timely basis.</p>
10.5	Dyneyg	<p>Section 10.5 - This section was added to give Parties the option to ask for security when the Mark-To-Market exposure exceeds a party's credit limit. (***)</p>
11.3	AEP	<p>Section 11.3 is modified by deleting the word "or" before Subsection 11.3(iii) and adding the following at the end of the first sentence thereof:</p> <p>"or (iv) increases or decreases in gas supply due to allocation or reallocation of production by well operators, pipelines, or third parties other than regulatory agencies; (v) the loss of Buyer's markets or Buyer's inability economically to use or resell Gas purchased hereunder; (vi) the loss or failure of Seller's gas supply or depletion of reserves; (vii) Seller's ability to sell Gas to a more advantageous market or Buyer's ability to purchase Gas at a price more advantageous than the Contract Price; (viii) a regulatory agency disallowing the pass through of costs resulting from this</p>



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		Agreement; or (ix) interruption of specific supply or markets at "pooling points" or "hubs" without the hub or pooling point operator claiming Force Majeure, or <u>Gas Daily</u> reporting less than two transactions at that pooling point during the claimed Force Majeure event."
11.5	ExxonMobil	Replace 3rd line of Section 11.5 with the following: "Upon providing written notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or"
11.6	Dynegy	Section 11.6 - This section was added to give procedures for curtailing firm volumes if they are cut due to force majeure.
12	Reliant	Add liquidated damage provision applicable to early termination.
13.10	AEP	"Section 13.10 The terms of any Transaction Confirmation hereunder, including but not limited to the Contract Price, the Contract Quantity, the Delivery Period, the identified Transporter(s), and all other material terms thereof shall be kept confidential by the parties hereto and their affiliates for one year from the expiration of such Transaction, except to the extent that any information must be disclosed to a third party for the purpose of effectuating transportation of Gas subject to the Contract or to meet New York Mercantile Exchange requirements or governmental orders or regulations."
13.6	Dynegy	Section 13.6 - This section was revised to include the right to declare an Early Termination Date if any provision of the Contract is determined to be illegal, invalid, etc.
13.9	AEP	Section 13 is modified by inserting the following new Sections 13.9 and 13.10 at the end thereof: "13.9 Each Party hereby expressly consents that the other Party may record, by tape or otherwise, any verbal agreements or discussions, whether telephonic or otherwise, between the Parties. Each Party agrees to obtain the consent of its agents and employees to such recording. A recording of the verbal agreement may be relied upon to resolve any differences provided that a true and complete copy is made available to the other Party. No Party may knowingly destroy or erase a recording once the possessing Party becomes aware of an actual dispute in which the recording may reasonably be anticipated to be discoverable."



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13.9	ExxonMobil	Add new Section 13.9 as follows: "The heading and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract. This Contract was prepared jointly by the parties. The parties agree that any rule of construction that would construe ambiguities against the drafter shall not apply to this Contract."
13.9	Koch	<p>The insertion of the following language in Section 13. Miscellaneous:</p> <p>13.9 Either Party shall submit any claim, controversy or request for interpretation arising out of or relating to this Contract ("Dispute") which cannot be mutually resolved by the Parties to binding arbitration by one arbitrator with knowledge of and over six years of professional experience in connection with similar transactions and who has not previously been employed or retained by either Party, and who does not have a direct or indirect interest in either Party, or the subject matter of the arbitration.</p> <p>Such arbitrator shall be selected by agreement of the Parties within thirty (30) Days after written notice from either Party requesting arbitration, or failing agreement, shall be selected using the above criteria under the expedited rules of the American Arbitration Association (the "AAA"). The arbitration shall be held in Houston, Texas. The rules of the AAA shall apply to the extent not inconsistent with rules herein specified. Either Party may initiate arbitration by written notice delivered to the Party if the claim is not barred under the applicable Texas statute of limitations, and the arbitration shall be conducted according to the rules of the AAA, subject to the following: (i) the arbitration hearing shall commence within thirty (30) Days of the selection of the arbitrator (ii) not later than fifteen (15) calendar Days prior to the hearing date set by the arbitrator, each Party shall submit a brief detailing its factual and legal position, and a final offer for the settlement of the Dispute (a "Final Offer") including a dollar amount if applicable, (iii) the arbitrator shall be limited to selecting only one Final Offer or, if applicable, one of the dollar amounts submitted by the Parties, (iv) each Party shall share equally the cost of the hearing and each shall be responsible for its own expenses and those of its counsel and representatives, and (v) evidence concerning the financial position or organizational makeup of the Parties, any offer made or the details of any negotiation or interpretation of the subject matter of the Dispute, subsequent to either Party's request for arbitration, and the cost to the Parties of their representatives and counsel shall not be admissible. The decision of the arbitrator shall be final and binding on the Parties, enforceable in any state</p>



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		court, and shall not be appealed by either Party.
Exhibit A	Dynegy	Exhibit A - We added language to note that if Special Provisions that affect the Base Contract or the General Terms and Conditions in areas other than commercial terms are attached to a Transaction Confirmation, then the Parties need to sign off on those Special Provision separately from the Transaction Confirmation. Quite often, the Confirming Party will attach several pages of Special Provisions and if the Receiving Party hasn't objected to the Transaction Confirmation within the Confirm Deadline, then the whole Transaction Confirmation, including the Special Provisions, is considered executed. There may be times when it takes longer than 2 Business Days to evaluate all of the Special Provisions from a legal perspective. This language prevents the Confirming Party from surprising the Receiving Party with non-commercial Special Provisions at the last minute.